

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

IBN HAQQ,

Plaintiff,

vs.

MARGARET MIMS, et al.,

Defendants.

1:20-cv-01547-NONE-GSA (PC)

**FINDINGS AND RECOMMENDATIONS
TO DISMISS CASE FOR FAILURE TO
OBEY COURT ORDER
(ECF No. 3.)**

**OBJECTIONS, IF ANY, DUE IN
FOURTEEN (14) DAYS**

**ORDER FOR CLERK TO SEND
PLAINTIFF AN APPLICATION TO
PROCEED IN FORMA PAUPERIS**

Ibn Haqq ("Plaintiff") is a Fresno County Jail inmate proceeding *pro se* with this civil rights action under 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on November 2, 2020. (ECF No. 1.)

On November 5, 2020, the Court issued an order requiring Plaintiff to either submit an application to proceed *in forma pauperis*, or pay the \$400.00 filing fee for this action in full, within thirty days. (ECF No. 3.) On November 30, 2020, Plaintiff filed a motion for a thirty-day extension of time, which was granted by the court on January 4, 2021. (ECF Nos. 6, 7.)

1 The thirty-day time period has now expired and Plaintiff has not submitted an application
2 to proceed *in forma pauperis*, paid the filing fee, or otherwise responded to the Court's order.

3 In determining whether to dismiss this action for failure to comply with the directives set
4 forth in its order, "the Court must weigh the following factors: (1) the public's interest in
5 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
6 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
7 public policy favoring disposition of cases on their merits." Pagtalunan v. Galaza, 291 F.3d 639,
8 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

9 "The public's interest in expeditious resolution of litigation always favors dismissal,"
10 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the
11 action has been pending since November 2, 2020. Plaintiff's failure to respond to the Court's
12 order may reflect Plaintiff's disinterest in prosecuting this case or inability to pay the filing fee.
13 In such an instance, the Court cannot continue to expend its scarce resources assisting a litigant
14 who will not or cannot resolve payment of the filing fee for his lawsuit. Thus, both the first and
15 second factors weigh in favor of dismissal.

16 Turning to the risk of prejudice, "pendency of a lawsuit is not sufficiently prejudicial in
17 and of itself to warrant dismissal." Id. (citing Yourish at 991). However, "delay inherently
18 increases the risk that witnesses' memories will fade and evidence will become stale," id., and it
19 is Plaintiff's failure to resolve payment of the filing fee for this action that is causing delay.
20 Therefore, the third factor weighs in favor of dismissal.

21 As for the availability of lesser sanctions, at this stage in the proceedings there is little
22 available to the Court which would constitute a satisfactory lesser sanction while protecting the
23 Court from further unnecessary expenditure of its scarce resources. Monetary sanctions in this
24 circumstance are of little use, and given the early stage of these proceedings, the preclusion of
25 evidence or witnesses is not available. However, inasmuch as the dismissal being considered in
26 this case is without prejudice, the Court is stopping short of issuing the harshest possible sanction
27 of dismissal with prejudice.

1 Finally, because public policy favors disposition on the merits, this factor will always
2 weigh against dismissal. Id. at 643.

3 Accordingly, the Court **HEREBY RECOMMENDS** that this action be dismissed based
4 on Plaintiff's failure to obey the Court's order issued on November 5, 2020.

5 These findings and recommendations are submitted to the United States District Judge
6 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
7 **(14) days** after the date of service of these findings and recommendations, Plaintiff may file
8 written objections with the court.¹ Such a document should be captioned "Objections to
9 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
10 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
11 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
12 (9th Cir. 1991)).

13
14 IT IS SO ORDERED.

15 Dated: April 20, 2021

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

16
17
18
19
20
21
22
23
24
25
26
27
28 ¹ Instead of filing objections, Plaintiff may complete and submit the enclosed application to
proceed *in forma pauperis* or pay the filing fee, which will enable this case to go forward.